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HAROLD B. WILLEY,

No. 847

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

G. J. AMSHOFF, ET AL.,

Petitioners,

vs.

UNITED STATES AND EZRA TAFT BENSON,
SECRETARY OF AGRICULTURE,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

H. TEMPLETON BROWN,
ROBERT L. STERN,
Attorneys for Petitioner.
231 South La Salle Street
Chicago 4, Illinois

Of Counsel:
MAYER, FRIEDLICH, SPIESS,
TIERNEY, BROWN & PLATT,
231 South La Salle St.,
Chicago 4, Illinois.

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered on December 13, 1955, in the above entitled case.

REFERENCE TO OPINION BELOW.

The opinion of the Court of Appeals is reported at 228 F. 2d 261, and is printed in the Appendix to this petition, pp. 19-30.

JURISDICTION.

The judgment of the United States Court of Appeals for the Seventh Circuit (App., *infra*, p. 31) was entered on December 13, 1955. A timely petition for rehearing was filed on December 28, 1955, and denied on January 17, 1956. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED.

Section 201.10(c) of the Regulations (19 F.R. 4525) issued by the Secretary of Agriculture on July 19, 1954, under the Packers and Stockyards Act requires the employees of packers who are engaged in the purchase of livestock at posted stockyards (hereinafter called packer-buyers) to register with the Secretary of Agriculture as "dealers". The question is whether the Regulation is authorized under the Packers and Stockyards Act.

STATUTORY PROVISIONS AND REGULATIONS INVOLVED.

A pamphlet containing the Packers and Stockyards Act, 42 Stat. 159, as amended, 7 U.S.C. §§ 181-229, and the regulations issued thereunder will be filed as an appendix volume to this brief. The Packers and Stockyards Regulations are also printed in full in the record (R. 2-44). Section 301(d) of the Act (7 U.S.C. § 201(d)) reads as follows:

> "When used in this Act— • • •
>
> "(d) The term 'dealer' means any person, not a market agency, engaged in the business of buying or selling in commerce livestock at a stockyard, either on his own account or as the employee or agent of the vendor or purchaser."

Section 201.10(c) of the Packers and Stockyards Regulations of July 19, 1954, reads as follows:

> "Any person regularly employed on salary, or other comparable method of compensation, by a packer to buy livestock at posted stockyards for such packer shall be subject to the registration requirements of the act and these regulations. Such persons shall be registered as dealers to purchase livestock for slaughter only."

STATEMENT.

This is a proceeding instituted by a number of packer-buyers and meat packing companies to set aside Section 201.10(c) of the Packers and Stockyards Regulations issued by the Secretary of Agriculture on July 19, 1954. A petition for review was filed in the Court of Appeals for the Seventh Circuit, under the authority of the Hobbs Act of December 29, 1950, 64 Stat. 1130, 5 U.S.C. (Supp.) § 1032, which provides for review of orders of the Secretary of Agriculture under the Packers and Stockyards Act by courts of appeals, instead of by three-judge district courts as previously. As permitted by 5 U.S.C. (Supp.) § 1037, the factual record consists of excerpts from the rule-making hearing (R. 45-72) and the stipulation of facts agreed to by the parties (R. 82-91). On December 13, 1955, the Court of Appeals sustained the validity of the Secretary's Regulation.

The parties have stipulated the facts as to the operations of stockyards in general and of packer-buyers and packers in particular (R. 82-91). These facts may be summarized as follows:

Buying and selling operations on the stockyards are primarily conducted by three types of persons.

(a) Those who buy or sell on a commission basis. As buyers they are generally referred to in the livestock industry as commission firms or merchants, or order buyers. As sellers they are generally referred to as commission firms or merchants or selling agencies. All are registered under the Packers and Stockyards Act as "market agencies." Most livestock handled at posted stockyards is *sold* on a commission basis. (Stip., pars. 9, 10, 16, R. 84-85).

(b) Those who buy or sell other than on a commission basis for their own account, who are frequently referred to in the livestock industry as dealers, and also as traders or speculators. They are registered under the Act as "dealers" (Stip., pars. 13, 14, 16, R. 84-85).

(c) Those who buy livestock for slaughter, processing and sale as meat, who are known as packers. Their buying is done largely by their own salaried employees who "are referred to in the livestock industry as buyers and packer-buyers, rather than as dealers" (Stip., pars. 16-17, R. 85).

"There are more than 1,800 packer-buyers buying livestock for packers at posted stockyards" (Stip., par. 18, R. 85). "The packer-buyer petitioners and other packer-buyers, in buying livestock for packers at posted stockyards, act in the name of, for the account of, and as the employees of packers, and not in their own names nor on their own accounts, and these facts are generally known to and accepted by persons operating at posted stockyards. The greater percentage of slaughter livestock is purchased by packers through their packer-buyers. Persons who serve as employees of registered market agencies and persons who serve as employees of registered dealers, at posted stockyards, act in the name of, for the account of, and as the employees of their employers, and not in their

own names nor on their own accounts, and these facts are generally known to and accepted by persons operating at posted stockyards. * * *" (Stip., par. 20, R. 85-86).

Employees of registered market agencies and of registered dealers, engaged in the same activities as are packer-buyers, have not been and are not now required to register or give bonds as market agencies or dealers so long as their employers are registered as such (Stip., pars. 22, 27, R. 87, 89).

Prior to 1933, the Department required both packers and packer-buyers to register as dealers and required packers to file bonds. In June, 1933, however, it was held in *United States* v. *Roberts & Oake*, 65 F. 2d 630 (C.A. 7), that packers were not dealers within the meaning of the statutory definition, and accordingly were not required to furnish bonds. After January 9, 1934, the Department did not request or require either packers or packer-buyers to register. A letter of that date from the Chief of the Bureau of Animal Industry to Armour and Company stated that "the Bureau is no longer requiring packer-buyers to register at posted markets" (Stip., par. 25, Exh. 2, R. 87-88, 91). Although no effort was made to require registration after that date, the previous registrations remained on file and a number of new registrations were filed. In the 1940's* the Department, "because of adminstrative considerations, discontinued registering packers and packer-buyers, as dealers, and removed all such existing registrations from the active file" (Stip., par. 26, R. 88-89).

The Department did not, after the *Roberts & Oake* case, require either packers or packer-buyers to register or file

* Mr. Cook, Chief of the Packers and Stockyards Division, testified that this occurred in or about 1940 (R. 48, 50, 51). The stipulation states (R. 89) that this occurred about 15 years after the *Roberts & Oake* decision, which would be in 1948.

bonds as dealers, prior to the 1954 regulation here involved. That regulation among others was issued after a rule-making hearing, during the course of which the Chief of the Packers and Stockyards Division explained the reasons underlying all proposed revisions. As reason for the regulation in dispute he stated that six packer-buyers together with 60 speculators, i.e. dealers, and 25 weighmasters had been involved in false weighing on the Chicago market,* and that the Department thought it advisable to subject packer-buyers to registration, so that in the future it could ban from the stockyards packer-buyers shown to have been engaged in such dishonest practices (R. 50-52).

The Department does not propose to subject to similar regulation the 3400 employees of registered dealers and market agencies, including the employees of the sixty dealers found to have been engaged in the foregoing fraudulent practices. Nor does the Department propose to register farmers selling their livestock on posted stockyards or auction markets.

REASONS FOR GRANTING THE WRIT.

1. The Packers and Stockyards Act contains five separate Titles. Each Title, with the exception of those containing definitions and general provisions, relates to a different subject matter. Title II provides for comprehensive regulation of the practices of packers and their employees, including packer-buyers. Title III provides for the regulation of stockyards, market agencies (commission men) and dealers. Market agencies and dealers are the only persons required to register (Section 303, 7 U.S.C. § 203) and post bonds (57 Stat. 422, 7 U.S.C. § 204, Pam-

* See *Cella* v. *United States*, 208 F. 2d 783 (C. A. 7), certiorari denied, 347 U.S. 1016; *Meyer* v. *United States*, 211 F. 2d 406 (C.A. 7), certiorari denied, 347 U.S. 1016.

phlet, p. 19). The term "Dealer" is defined in Section 301(d) as follows:

> "When used in this Act— • • •
>
> "The term 'dealer' means any person, not a market agency, engaged in the business of buying or selling in commerce livestock at a stockyard, either on his own account or as the employee or agent of the vendor or purchaser."

The importance of this case is measured not merely by the effect which it will have upon 1800 packer-buyers and their employers, but more importantly perhaps by the effect which it will have upon every farmer and rancher, who with some continuity of practice, sells his livestock upon a posted stockyard or auction market, and upon the 3400 employees of commission firms or traders whose activities are similar to those of a packer-buyer. While the Department in effect admits the weakness of its position by conceding that it has not registered and is not proposing to compel the registration of these persons, it does not deny that under the theory advanced by it they would be subject to the registration provisions of the Act.

Is the act then, through the phrase "engaged in the business of buying or selling in commerce" in the above definition, intended to subject to the requirement of registration and all that such requirement entails (a) persons such as farmers and ranchers whose market transactions are only incidental to the business of raising livestock, and (b) salaried employees who buy exclusively for employers who are not themselves required to register as dealers?

2. The question directly at issue is whether packer-buyers are dealers. It is stipulated that they are not referred to as dealers in the industry (R. 85), and they are not dealers within the ordinary meaning of that term.

Although a statutory definition may give a word a special meaning for purposes of a particular statute, a departure from the accepted meaning of a familiar term should be clearly expressed. Here, as we shall show, the definition itself is ambiguous, and the ordinary meaning of the phrase, heretofore observed in the administration of the Act,* may well throw light upon the meaning of ambiguous language in the definition. Furthermore, even a statutory definition is not decisive if it creates "incongruities" in the interpretation of the statute, as is true of the Government's argument here. *Lawson* v. *Suwanee Fruit & S. S. Co.*, 336 U.S. 198, 201 (1949).

(a) The Secretary's contention is that the phrase "engaged in the business of buying or selling" means every one who buys or sells, as long as there is the added element of "continuity or habitual practice." (Respondents' brief below, p. 17) But the phrase does not necessarily have that meaning. Courts have recognized that the words "business" or "engaged in business" are words of variable content. Thus, in *Karnuth* v. *United States*, 279 U. S. 231, 243 (1929), this Court said:

> "The word [business] is one of flexibility; and, when used in a statute, its meaning depends upon the context or upon the purposes of the legislation. * * * The true sense in which the word was here employed will be best ascertained by considering the policy, necessity and causes which induced the enactment."

In *Derrick* v. *Commonwealth*, 122 Va. 906, 911, 95 S.E. 392, 393 (1918), the Supreme Court of Appeals of Virginia stated:

> "The lexicographers and courts have found it impossible to define even the word 'business' with sufficient

* Except for packers and packer-buyers in the period before the *Roberts & Oake* decision in 1933.

> accuracy to cover all cases. The same is true of the meaning of the phrase 'engage in business.'"

Whether the phrase has an all-inclusive meaning or a narrower one depends, as this Court stated in the *Karnuth* case, *supra,* upon the context and purposes of the legislation. Thus, a law regulating all persons engaged in the automobile business would not necessarily apply to each worker in a General Motors plant. It might if the regulation related to safe conditions of labor, but not if the law was concerned with restraints of trade. Similarly, a farmer or rancher who bought feed for his cattle would not be ordinarily regarded as "engaged in the business of buying feed"; his business would be farming or cattle raising.

A number of cases have held that the word "business" in a statute means the owner's "principal, main, or chief business." *Thomas* v. *Creager,* 107 S. W. 2d 705, 707, 709 (Tex. Civ. App. 1937); *Lyons-Thomas Hardware Co.* v. *Perry Stove Mfg. Co.,* 86 Tex. 143, 24 S.W. 16 (1893); *Texas Co.* v. *Amos,* 77 Fla. 327, 81 So. 471 (1919) (oil company not in tank car business); *State* v. *Nelson,* 155 Fla. 399, 20 So. 2d 394 (1945) (adjuster employed by an insurance company not engaged in the business of an insurance adjuster); *Rogers* v. *City of Sandersville,* 120 Ga. 192, 47 S.E. 557 (1904) (salesman who posts bills and distributes advertisements as part of his selling activity is not "engaged in the business of posting bills and distributing advertisements"). And it has also been held that the phrase "engaged in business" meant engaged in one's own business. *Derrick* v. *Commonwealth, supra; Watts* v. *Commonwealth,* 106 Va. 851, 56 S.E. 223 (1907).

Here, consideration of the purpose and plan of the statute, as well as of the practical consequences, demonstrates that "engaged in business" could not have been meant to

have the sweeping all-inclusive meaning now sought by the Government. The consequences of such an interpretation would be to force every farmer who, with reasonable continuity, sells his own livestock on the stockyards to register as a dealer, a result that Congress plainly never intended. The purpose of the statute was to protect farmers, not to regulate them. And yet such farmers would be "dealers" under the statute, to the same extent as packer-buyers, unless the statutory phrase "engaged in the business of buying or selling" in the definition of dealer be construed, as the decisions cited above have construed it in other connections, as meaning persons whose *principal* business is buying or selling.

An analysis of the Act, viewed as a whole, makes it clear that Congress had precisely this distinction in mind. When Congress in Title II referred to the livestock buying activities of a packer, Congress showed interest not in his purchases of livestock as such, but rather in the use to which the livestock was to be put. A packer was defined in Section 201 as a "person engaged in the business (a) of buying livestock • • • for purposes of slaughter • • •"

Conversely, when under Title III Congress defined a dealer, Congress made it clear that its interest in the dealer's business activities began and ended with the purchase or sale itself, and stated his business to be that of "buying or selling • • • livestock." A packer-buyer admittedly buys cattle *for purposes of slaughter.* If it be assumed *arguendo* that he is engaged in a business, it is not the business described in Section 301(d).

(b] Furthermore, the statute on its face demonstrates that regulating the packers or their employees as dealers under Title III would not effectuate any legislative purpose, for packers are regulated more stringently under

Title II than are dealers under Title III, and the regulations cover the same practices.

The only substantive provisions in Title III applicable *to dealers* is Section 312 (7 U.S.C. §213(a)) which makes it "unlawful for any * * * dealers to engage in or use any unfair, unjustly discriminatory or deceptive practice or device" in connection with certain activities in commerce on the stockyards. Section 202(a) of Title II contains *in haec verba* the same proscription for packers, but more broadly applicable to all activities "in commerce." Title II not only contains many other restrictions on packers, but in addition Section 403 (7 U.S.C. §223) provides that the acts of agents, officers or employees of packers within the scope of their employment should be deemed the acts of the packer, as well as of the individual concerned, and Section 205 (7 U.S.C. §195) provides that a packer's officers, agents and employees are bound by orders against the packer. Accomplishment of the purpose of the statute thus does not require that packers or their employees be regulated as dealers under Title III.

The purpose of Title III was to reach persons, not controlled under Title II, who were engaged in business on the stockyards—the yard companies themselves, the commission men (market agencies), and the dealers or speculators acting on their own behalves. This is apparent from the context of Title III, which is concerned almost entirely (apart from Section 312, which repeats the content of Section 202(a)) with such matters as reasonable and nondiscriminatory rates, charges, services and practices. Regulation of this sort is appropriate for persons engaged in ordinary stockyard activities, but not for packers or their employees.

In appraising the intent of Congress it is significant to note that when the Act was passed it contained no provision for the suspension of a registrant.* Registration meant identification, not regulation. Section 303. Congress could not conceivably have intended, therefore, that by classifying a packer-buyer as a dealer and thereby subjecting him to the registration requirements of the Act it would provide the disciplinary power which the Department now states to be the sole purpose for the regulation.

What else could Congress have had in mind as a possible reason for classifying a packer-buyer as a dealer? Was it thereby intended that he should maintain the records called for by Section 401? The Department concedes that this would merely duplicate records kept by the packers themselves and that it does not propose to require their maintenance. Did Congress mean to classify a packer-buyer as a dealer in order to prevent him from engaging in the unfair or the deceptive practices from which he was already enjoined, by virtue of the provisions of Title II?

If Congress did not have any such considerations in mind, and petitioners submit that Congress clearly did not, then what purpose could have been served by subjecting one and only one class of packer-employees to duplicating and sterile regulation? Logic and reason argue that such was not the Congressional intent.

It is to be noted that Title V, imposes similar regulations on live poultry dealers and handlers, but specifically exempts packers handling poultry, thereby leaving them subject to the prohibitions of Title II exclusively. This again manifests the Congressional determination that each occupation subject to regulation be regulated under only

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* Suspension of registrants for violation of the Act was first authorized in permanent legislation by the Act of July 12, 1943, 57 Stat. 422, 7 U.S.C. § 204. The same provision had previously been included in a number of annual appropriation bills.

one Title. The fact that for 20 years the Department of Agriculture acquiesced in such a construction of the Act, and then changed its position only because of a desire to obtain greater regulatory power over an isolated group of persons already subject to regulation, also demonstrates how little reason there is to classify packer-buyers as dealers.

(c) The construction sought by the Department would result in other anomalous consequences which Congress could not possibly have intended. Laws are to be construed so as to avoid "unreasonable consequences." *United States* v. *American Trucking Associations,* 310 U.S. 534, 543. And it is proper to take consequences into effect, since they "may provide insight for determination of congressional purpose." *Brooks* v. *United States,* 337 U.S. 49, 52.

It has already been pointed out that the Government's construction of the Act would require farmers who sell their own livestock on posted stockyards to register as dealers. Section 401 provides that "Every packer, stockyard owner, market agency and dealer shall keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business, including the true ownership of such business by stockholding or otherwise." Although the Secretary may by regulation determine the manner in which this shall be done, he is given no authority to waive the statutory requirement completely. If each of 1800 packer-buyers is a dealer, each is required by the statute to keep a set of records, although the Department itself concedes that there is no sense to the keeping of records of packers' purchases by anyone but the packers themselves. The same requirements would apply to each of the approximately 3,400 buying and selling employees of persons other than packers, each of whom, according to the Secretary's theory, must be classified either as a market agency or as a dealer, and as such would be as much subject to the incidents of registration as would a packer-buyer.

Lastly and most illogically they would apply to the farmer acting only for himself and require him to go to the trouble and expense of keeping records which could serve no possible useful purpose.

It is to be observed that the last clause of the sentence quoted from Section 401 requires each "packer, stockyard owner, market agency and dealer" to disclose all facts relating to the "true ownership of such business by stockholding or otherwise." Such a requirement can have no possible reference to a salaried employee. Taken again with the description of a dealer in Section 301(d) as a person "engaged in the business of * * *," it offers almost conclusive proof that in using the term "dealer" Congress did not have in mind the salaried employee of a packer or of anyone else, but persons engaged in business on the stockyards.

Further light is shed on the weakness of the Secretary's position by considering his method of classifying these employee groups. The employee of a dealer is classified as a dealer because his employer is a dealer although the employee need not register if his employer does (Stip., par. 22, R. 87). The employee of a market agency is classified as a market agency because his employer is a market agency, although he too need not register. (*Ibid.*) But the employee of a packer is not regarded as a packer, but becomes a dealer and is now required to register as such. If the Secretary's interpretation of Section 301(d) is valid then the salaried employee of a market agency, who is the agent of a "vendor or purchaser" buying or selling on the stockyards, and who is not paid on a commission basis, becomes a dealer. The fact that in order to be consistent in his interpretation of Section 301(d) the Secretary would have to reach such results, casts further doubt upon the validity of the interpretation sought by him.

(d) The Government seeks to maintain its position by isolating the phrase "or as the employee or agent of the vendor or purchaser" from the rest of the Act and interpreting it in a vacuum. The Government is not interested in considering what Congress was trying to accomplish in the passage of the Act or in what form its purposes were accomplished. The Government in effect merely says that however illogical the effect of its interpretation may be, it is an interpretation to which the phrase in question is literally susceptible.

(e) The legislative history of the Act discloses the reason for this provision, a reason entirely foreign to that urged by the Government. Congress feared that the independent trader acting for his own account, if unregulated, might exert an improper influence upon the market. There was also concern over the possibility that, acting not on his own account but as the undisclosed employee or agent of a packer, he might engage in questionable activities. The language in question reasonably interpreted means nothing more than that the independent trader should be required to register as a dealer regardless of the capacity in which he might act, whether as agent or employee, and subjected to regulation comparable to that to which the packer and his employees were already subjected by virtue of the provisions of Title II.

Originally, Representative Haugen, who as Chairman of the House Agriculture Committee played a prominent role in the drafting of this legislation, proposed the following definition of dealer, which would explicitly have excluded packers and their employees:

> "The term 'dealer' means any person engaged in the business of buying or selling in commerce livestock at a stockyard, either in his own account or as the employee or agent of the vendor or purchaser, *but does*

> *not include* a market agency or *a packer, or an employee or agent of either.*" (Emphasis supplied.) House Agriculture Committee Hearings: *Meat Packer,* p. 11, 67th Cong.: 1st Sess. (May 2-6, 1921).

Although the specific exemption was omitted, the House Committee Report which explains Section 301 declares that: "Section 301 defines * * * dealer (which includes a person engaged in the business of *buying and selling* in intrastate or foreign commerce livestock at a stockyard)." (Italics added.) H. Rept. No. 77, 67th Cong., 1st Sess., p. 10. The use of the phrase "buying and selling" rather than the statutory phrase "buying or selling" is significant, in that it shows that the House Committee was thinking of the trader who makes it his business to both buy and sell, and not of the packer or packer-buyer whose activities are limited to the buying side.

Subsequently, in the Senate, Senator Kenyon proposed to amend the definition of dealer by adding the following phrase:

> "And includes any packer in his capacity as a buyer or seller of livestock in commerce and any employee or agent of any packer in such capacity." 61 Cong. Rec. 2665.

He explained that the "purpose of this amendment is simply to make it specific that the buyers of the packers, *who may operate under assumed names or as dummies in the stockyards,* shall be included. There cannot be any question about that." *Ibid.* (Italics supplied.) The amendment passed the Senate, but was not accepted by the Conference Committee. The House Conference report stated:

> "Amendment No. 7: The House Bill defined 'dealer' to mean any person 'engaged in the business of buying or selling, in interstate or foreign commerce, livestock

> at a stockyard, either on his own account or as the employee or agent of the vendor or purchaser.' The Senate amendment adds at the end of this definition words which merely repeat what was in the House bill; and the Senate recedes." H. Rept. No. 324, 67th Cong., 1st Sess., p. 3.

Senator Kenyon's explanation shows that he was concerned not with the normal open buying activities of a packer acting through its regular employees, such as packer-buyers, but with the activities of traders whom the packer might use as hidden agents, and who would obviously be purchasing in their own names as independent operators. This shows that there was no real conflict between the views of Senator Kenyon and Representative Haugen of the House Committee. Both would have intended that independent traders acting as dummies for packers be regulated as dealers. But there is no indication that either wished the packers themselves or their salaried buyers all of whom are regulated more strictly under Title II to be subject of additional regulation under this Section. It is true that Senator Kenyon's proposed amendments in terms might have gone that far, but it is also apparent that Senator Kenyon was satisfied that the Act in its final form accomplished his objectives without resort to the more far reaching language which he had first suggested. There is nothing in the Conference Report or in the remaining legislative history of the Act which is inconsistent with this conclusion.

The construction sought by petitioners would provide ample regulation for every person covered by the Act, it would avoid the necessity of regulating persons whom the Department admittedly does not wish to regulate, i.e. farmers and employees of dealers and market agencies, and it would avoid the duplicating and illogical regulation of a single group of packer-employees.

CONCLUSION.

This case involves questions important to the administration of the Packers and Stockyards Act. The decision below erroneously construes the statute in a manner which will result in serious inconsistencies and difficulties in enforcement. Accordingly, this petition for certiorari should be granted.

Respectfully submitted,

H. Templeton Brown,
Robert L. Stern,
Attorneys for Petitioner.
231 South La Salle Street
Chicago 4, Illinois

Of Counsel:

Mayer, Friedlich, Spiess,
Tierney, Brown & Platt,
231 South La Salle St.,
Chicago 4, Illinois

APPENDIX

1. *Opinion of the Court below*

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 11256 October Term, 1955, October Session, 1955

G. J. AMSHOFF, et al.,
Petitioners,

-vs-

UNITED STATES OF AMERICA, and EZRA TAFT BENSON, SECRETARY OF AGRICULTURE OF THE UNITED STATES,
Respondents.

On Petition for Review of an Order of the Secretary of Agriculture.

December 13, 1955.

Before FINNEGAN, SWAIM and SCHNACKENBERG, *Circuit Judges.*

SCHNACKENBERG, *Circuit Judge.* Petitioners have invoked the jurisdiction of this court under the Hobbs act.[1]

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1. "The court of appeals shall have exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of, all final orders (a) of the Federal Communications Commission made reviewable in accordance with the provisions of section 402(a) of Title 47, and (b) of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921, as amended, and under the Perishable Agricultural Commodities Act, 1930, as amended, except orders issued under sections 210(e), 217a, and

Their petition was filed herein on August 26, 1954, and expresses its purpose as seeking a review of a final order promulgating section 201.10(c) of the regulations issued on July 19, 1954, by the secretary of agriculture under the packers and stockyards act, but not sections 309(e) and 317 thereof.[2]

There are two groups of petitioners: first, various named firms (referred to as packer petitioners), who are engaged in the purchase of livestock in commerce on the Union Stockyards in Chicago or on other public stockyards subject to regulation under the packers and stockyards act, and secondly, Amshoff and other individuals named who are persons employed by packer petitioners in the purchase of livestock in commerce at said stockyards, (referred to as packer-buyers).

The petition charges that on July 19, 1954 the secretary of agriculture promulgated revised regulations under the packers and stockyards act, and that section 201.10(c) provides that:

> "(c) Any person regularly employed on salary, or other comparable method of compensation, by a packer to buy livestock at posted stockyards for such packer shall be subject to the registration requirements of the act and the regulations in this part. Such persons shall be registered as dealers to purchase livestock for slaughter only."

499g(a) of Title 7, and (c) such final orders of the United States Maritime Commission or the Federal Maritime Board or the Maritime Administration entered under authority of the Shipping Act, 1916, as amended, and the Intercoastal Shipping Act, 1933, as amended, as are now subject to judicial review pursuant to the provisions of section 830 of Title 46, and (d) of the Atomic Energy Commission made reviewable by section 2239 of Title 42.

Such jurisdiction shall be invoked by the filing of a petition as provided in section 1034 of this title." 5 U.S.C.A. 1950 Cum. Suppl., 1954 Cum. Annotations § 1032.

2. 7 U.S.C.A. 1952 Ed. §§ 210(e) and 217(a).

The petition makes the following "statement of legal position": "The regulation requiring packer buyers to register and subjecting them to the regulations issued by the Secretary of Agriculture is not authorized by the Packers and Stockyards Act, since packer buyers are not 'dealers' within the meaning of that Act."

The packers and stockyards act[3] defines the term "dealer" as "any person, not a market agency, engaged in the business of buying or selling in commerce livestock at a stockyard, either on his own account or as the employee or agent of the vendor or purchaser."

Section 203 of the same act[3a] in its pertinent parts provides: "• • • no person shall carry on the business of a market agency or dealer at such stockyard unless he has registered with the secretary under such rules and regulations as the secretary may prescribe, his name and address, the character of business in which he is engaged, and the kinds of stockyard services, if any, which he furnishes at such stockyard."

By a signed stipulation filed in this court, the parties hereto have agreed upon the following facts, *inter alia:*

Packer-buyers are registered by the department as dealers to buy livestock for slaughter only, on salary or other comparable method of compensation. Specifically, packer-buyers are referred to in the livestock industry as buyers and packer-buyers, rather than as dealers. Packer petitioners regularly buy livestock for their own accounts for slaughter, through employees regularly employed on salary or other comparable method of compensation, including the packer-buyer petitioners, at posted stockyards,

3. *Ibid* § 201(d).
3a. *Ibid.* § 203.

including the Union Stock Yards, Chicago. There are more than 1,800 packer-buyers buying livestock for packers at posted stockyards. Packer-buyers act in the name of, for the account of, and as the employees of packers, and not in their own names nor on their own accounts, and these facts are generally known to and accepted by persons operating at posted stockyards. The greater percentage of slaughter livestock is purchased by packers through their packer-buyers. The only packers who are registered as dealers are several small packers who personally buy livestock at posted stockyards.

The stipulation also indicates that responsible officials of the department of agriculture would testify to the following administrative practice and construction: The department has regarded packer-buyers employees as being subject to registration as dealers. However, when employers were registered and bonded the department generally considered such registration and bonding to be sufficient to permit effective enforcement of the regulatory program and accordingly when the employees of such registrants acted within the scope of their employment, it was not the general practice of the department to request such employees to register and give bond, and enforcement proceedings were not instituted to require them to register and give bond. Prior to 1933, it was the regular and continuous practice of the department to require packers and their employee buyers to register as dealers and to require packers to file bonds pursuant to the act. In 1926, proceedings before the secretary of agriculture terminated in orders directing a packer, Roberts & Oake, and a packer-buyer, Howard Turner, to furnish bonds. Howard Turner, the packer-buyer, was registered under the act as a dealer. The United States instituted a suit to compel the packer to furnish a bond. On appeal, the United States Circuit Court

of Appeals for the Seventh Circuit filed its opinion, *United States* v. *Roberts & Oake,* 65 F. 2d 630, on June 5, 1933. No petition for a writ of certiorari was filed in the Supreme Court. After January 9, 1934, it was not the general practice of the department to request packers and packer-buyers to register. The chief of bureau of animal industry of the department of agriculture on January 9, 1934 wrote to Armour and Company, a packer, saying, in part, "you are informed that the Bureau is no longer requiring packer buyers to register at posted markets." After the decision in *United States* v. *Roberts & Oake, supra,* a number of new registrations by packers and packer-buyers, as dealers, were filed. About 15 years after the decision in *United States* v. *Roberts & Oake, supra,* the department, because of administrative considerations, discontinued registering packers and packer-buyers, as dealers, and removed all such existing registrations from the active file. As of the date of the stipulation, which was filed February 28, 1955, about 1,824 packer-buyers who purchased livestock for slaughter were registered as dealers. The case of *United States* v. *Roberts & Oake, supra,* is the only reported court case instituted by the government to compel a packer to furnish a bond under the act. There is no reported court case instituted by the government to compel a packer or a packer-buyer to register, under the act, as a dealer.

The petition alleges that prior to 1933 the secretary of agriculture construed the packers and stockyards act to require both packers and their buyers to register and file bonds,[4] but since 1933 and until the promulgation of the regulation challenged in the instant case, he has acquiesced in the construction of the packers and stockyards act as not requiring registration of packer-buyers.

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4. Registration provisions specifying the method of registration were first issued shortly after the passage of the act in 1921.

The petition charges that "the packer-buyer petitioners are parties aggrieved by Regulation 201.10(c), since it directly applies to them, and subjects them both to the registration and other requirements of Title III of the Packers and Stockyards Act. If they fail to register as required by the challenged regulation, they will be subjected to the risk of cumulative penalties. If they do register or attempt to register, they will subject their means of livelihood to the control of the secretary of agriculture, with the result that they cannot continue in the occupation upon which they depend for their living if he should deny or suspend registration."[5]

Petitioners pray that this court enjoin the enforcement of, set aside and suspend section 201.10(c) of the packers and stockyards regulations issued by the secretary of agriculture on July 19, 1954 (Fed. Reg. 146 July 22, 1954, p. 4525), and declare that the aforesaid section 201.10(c) is contrary to law and invalid.

An appendix to the petition sets forth (as "pertinent portions of the regulations") "Part 201," showing that the regulations in question were promulgated by the secretary of agriculture under date of July 19, 1954[6] following various public hearings on the subject of revising the existing regulations. The only regulation quoted in the appendix is section 201.10(c).

1. At the threshold we must consider the challenge of the secretary of agriculture to our jurisdiction to proceed because, he contends, only final *orders* under the packers and stockyards act, 1921, as amended, are reviewable under the Hobbs act.[7] He contends that the notification challenged

5. It is alleged that the packer petitioners are aggrieved parties.

6. F. R. Doc. 54-5645; Filed, July 21, 1954; 8:35 a.m.

7. 5 U.S.C.A. 1950 Cum. Suppl., 1954 Cum. Annotations § 1032.

in this court proceeding is not an order within the meaning of said act. He contends that the packers and stockyards act requires all dealers to register with the secretary "under such rules and regulations as the secretary may prescribe • • •,"[8] and that, the statute having defined the term "dealer,"[9] "The notification by the Secretary, set forth in the revised regulations issued under the Act, merely iterates the statutory requirement that any 'dealer' within the ambit of the statutory definition, including a buyer for a packer, shall register in accordance with the requirements of the Act and the regulations." The gist of his argument is:

> "The notification imposes no obligation or requirement on the buyers not imposed by the statute. The notification is not the force which requires the buyers to register. The statute requires all dealers to register under the rules prescribed by the Secretary, • • •. The requirement of registration applies even though no notice is given by the Secretary. In this instance, the notice was given to the industry because of the prior administrative practice, and the notice merely informed the industry that the provisions of the statute, which the Secretary has no authority to waive, would be enforced."

Conceding that most of the regulations published with the challenged notice implement obligations imposed on persons subject to the act, he points out that no challenge is made, in this proceeding, with respect to the method of registration set forth in section 201.10(a)(b), and that petitioners' attack is aimed only at the requirement of registration. He then reasons that inasmuch as the statute "imposes the obligation on dealers to register 'under such rules and regulations as the Secretary may prescribe,' • • •

8. 7 U.S.C.A. 1952 Ed. § 203.
9. *Ibid*, § 201(d).

the notification that the buyers for packers shall register in accordance with the requirements set forth in the Act and in the regulations imposes no new[10] obligation on the buyers."

The secretary says, and he is correct in the statement, that the petition to review is limited to the challenge of a single provision in the revised regulations, *i. e.*, section 201.10(e), which notifies the industry that the act will be enforced as to the buyers for packers. He insists that that notice is not even an interpretative regulation, because there is nothing that requires interpretation or construction. Contending that the statute defines the term dealer, and makes dealers subject to the registration requirements of the act and the regulations, he says that his notice merely states that a buyer for a packer, who is squarely within the statutory definement of "dealer," is subject to the registration requirements of the act and the regulations. He adds that "where the words are plain there is no room for construction."

In testing the correctness of the secretary's contention, especially that section 201.10 imposes no new obligations on the packer-buyers, we must consider the factual situation which had existed for about 20 years, by virtue of the established policy of the secretary, rather than the situation which would have existed if he had enforced the act as written during that period of time. The administrative construction thus placed upon the act by the agency charged with its administration may or may not have been justified by our decision in *United States* v. *Roberts & Oake, supra,* but nevertheless it was the construction deliberately adopted and openly relied upon by the secretary, and correlatively relied upon by the public, including the packer-buyers.

10. Italics supplied by us for emphasis.

During that period there was actually no obligation to register enforced against packer-buyers. In resolving this challenge to our jurisdiction we are not called upon to decide whether the secretary had a right to change his policy and impose obligations under the act upon the packer-buyers. That question may be resolved only if we find that his promulgation of section 201.10(c) is an order reviewable under the Hobbs act.

We hold that his notification of the promulgation of regulation section 201.10 reversed the administrative policy construing the act, which policy had been in effect for 20 years, and therefore imposed obligations upon packer-buyer petitioners as well as packer petitioners. Those obligations, when measured by the jurisdictional test which we are now applying, are of the same type as those involved in *Columbia Broadcasting System, Inc.* v. *United States,* 316 U.S. 407, 425, and *Federal Communications Com.* v. *American Broadcasting Co., Inc.,* 347 U.S. 284, 290. The court said in *Columbia Broadcasting System, Inc.* v. *United States, supra,* at 425:

> "The ultimate test of reviewability is not to be found in an overrefined technique, but in the need of the review to protect from the irreparable injury threatened in the exceptional case by administrative rulings which attach legal consequences to action taken in advance of other hearings and adjudications that may follow, the results of which the regulations purport to control."

We therefore hold that the notification of the promulgation of regulation section 201.10 is an order subject to our review under the Hobbs act.

2. We are now asked by petitioners to uphold their contention, which is that the packer-buyer is not required to register under the packers and stockyards act because he

is not a "dealer" within the definition of the act and its long-standing judicial and administrative construction.

Petitioners claim that section 201(d)[11] of the act is ambiguous, while respondents contend that it is unambiguous.

In support of the charge of ambiguity, petitioners point out that this section is found in Title III of the act, which they say makes no reference to the activities of a packer or any of his employees and that, if congress had intended registration requirements to apply to a packer or his employees, as well as to stockyard owners, market agencies and dealers, that provision would logically have found its place in Title IV, known as "General Provisions." They also argue that, if the section be construed to include packer-buyers, it would illogically require the maintenance of daily records of livestock purchases and sales by about 1,800 packer-buyers, which indeed might lead to a conclusion that the secretary has power to require the keeping of records by an additional 3,400 persons, who are employees of persons other than packers and who are engaged in the purchase or sale of livestock at posted stockyards. They contend that these requirements would be useless and, at least to the extent of the packer-buyers, would require the making of records which would be duplications of the records kept by their employers, the packers.

On the other hand, respondents, in support of their contention that the legislative definition of dealer contained in the act means exactly what it says, *i.e.*, that any person buying livestock on a posted stockyard as an employee or

11. 7 U.S.C.A. § 201(d) "The term 'dealer' means any person, not a market agency, engaged in the business of buying or selling in commerce livestock at a stockyard, either on his own account or as the employee or agent of the vendor or purchaser."

agent of the purchaser is a dealer, cite the legislative history of the act. They point out that it has been said:[12]

> "But words are inexact tools at best, and for that reason there is wisely no rule of law forbidding resort to explanatory legislative history no matter how 'clear the words may appear on "superficial examination."'"

When the bill for the act[13] was before the senate, Senator Kenyon proposed an amendment to the definition of "dealer" by inserting after the word "purchaser" and before the period, the following: "And includes any packer in his capacity as a buyer or seller of livestock in commerce and any employee or agent of any packer in such capacity."[14] He explained in the debate in the senate that the "purpose of this amendment is simply to make it specific that the buyers of the packers, who may operate under assumed names or as dummies in the stockyards, shall be included. There cannot be any question about that." The amendment was adopted but was rejected later in conference and the house conference report on the bill explains the reason for the rejection in these words: "Amendment No. 7: The House Bill defined 'dealer' to mean any person 'engaged in the business of buying or selling, in interstate or foreign commerce, livestock at a stockyard, either on his own account or as the employee or agent of the vendor or purchaser.' The Senate amendment adds at the end of this definition words which merely repeat what was in the House bill; and the Senate recedes."[15]

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12. *Harrison* v. *Northern Trust Co.*, 317 U.S. 476, at 479.

13. H. R. 6320, 67th Cong., 1st Sess.

14. 61 Cong. Rec. 2665.

15. H. Rep. No. 324, 67th Cong., 1st Sess., p. 3, 61 Cong. Rec. 4778-4779.

We hold that section 201(d) of the act requires the packer-buyer petitioners to register under the act as dealers. If the consequences of the act are illogical, unreasonable or undesirable, in the opinion of congress, it, and only it, can make a change. This court cannot by judicial interpretation alter a statute.

The case of *United States* v. *Roberts & Oake,* 65 F.2d 630, upon which petitioners rely, is not controlling in this case. As was said in *Kelley* v. *United States,* 202 F.2d 838, at 841: "All that case is authority for is that a packer is not a dealer under the Act and is, therefore, not required to give a bond."

We hold that section 201.10(c) of the regulations is valid as against the attack of petitioners. We conclude that the prayer of the petition that the enforcement of the regulation be enjoined and that the regulation be set aside and suspended, should be and it is hereby denied.

A true Copy:

Teste:

.....

Clerk of the United States Court of Appeals for the Seventh Circuit.

2. *Judgment*

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Chicago 10, Illinois

Tuesday, December 13, 1955

Before

Hon. PHILIP J. FINNEGAN, *Circuit Judge*

Hon. H. NATHAN SWAIM, *Circuit Judge*

Hon. ELMER J. SCHNACKENBERG, *Circuit Judge*

G. J. AMSHOFF, et al., *Petitioners,* vs. UNITED STATES and EZRA TAFT BENSON, Secretary of Agriculture, *Respondents.*	On Petition for Review of an Order of the Secretary of Agriculture.

This cause came on to be heard on the Petition for Review of a Final Order of the Secretary of Agriculture promulgating Section 201.10 (e) of the Regulations issued by the Secretary of Agriculture under the packers and

stockyards act, on July 19, 1954, and the transcript of the record from the Secretary of Agriculture, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the prayer of the Petition that the enforcement of the Regulation be enjoined and that the Regulation be set aside and suspended be, and the same is hereby DENIED.

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 847

G. J. AMSHOFF, ET AL., PETITIONERS

v.

UNITED STATES AND EZRA TAFT BENSON, SECRETARY OF AGRICULTURE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AND THE SECRETARY OF AGRICULTURE IN OPPOSITION

OPINION BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit (Pet. 19–30) is reported in 228 F. 2d 261.

JURISDICTION

The judgment of the Court of Appeals (Pet. 31–32) was entered on December 13, 1955, and a timely petition for rehearing was denied on January 17, 1956. The petition for a writ of certiorari was filed on April 11, 1956. The juris-

diction of this Court is invoked under 28 U. S. C. § 1254 (1).

QUESTION PRESENTED

Section 301 (d) of the Packers and Stockyards Act, 1921, defines "dealer" to include "any person * * * engaged in the business of buying * * * livestock at a stockyard * * * as the employee or agent of the * * * purchaser." The question presented is whether persons regularly employed on salary by a meat packer to purchase livestock for the packer at a stockyard are "dealers" within the foregoing definition.

STATUTES AND REGULATIONS INVOLVED

The Packers and Stockyards Act, 1921, 42 Stat. 159, as amended, 7 U. S. C. 181 *et seq.*, and the regulations issued thereunder (R. 2–44), are set forth in a pamphlet filed as an appendix to the petition.

STATEMENT

The Packers and Stockyards Act, 1921 regulates, *inter alia*, the marketing of livestock at stockyards "posted" by the Secretary of Agriculture, *i. e.*, determined by him to be within the statutory definition of "stockyard." Section 303 (7 U. S. C. 203) prohibits any "dealer" from engaging in business at a posted stockyard unless he has registered with the Secretary. Section 301 (d) (7 U. S. C. 201 (d)) defines dealer as "any person, not a market agency, engaged in the business of buying or selling in commerce livestock at a stockyard, either on his own account or

as the employee or agent of the vendor or purchaser."[1]

Petitioners are meat packers and certain of their employees who purchase livestock for them in stockyards. They seek review of a regulation of the Secretary which declares that persons regularly employed by a packer to buy livestock at a posted stockyard (commonly known as "packer-buyers") shall be subject to the registration requirements of the Act. The court of appeals unanimously upheld the regulation, on the ground that packer-buyers are "dealers" under Section 303 of the Act.

The underlying facts are not in dispute and may be briefly summarized. Meat packing companies regularly buy livestock at posted stockyards, acting through their own employees regularly employed on salary or other comparable method of compensation (R. 85). These employees purchase such livestock in the name of, for the account of, and as employees of the packers, and not in their own names or on their own accounts (R. 85). There are more than 1,800 packer-buyers buying livestock for packers at posted stockyards (R. 85).

From the time of the enactment of the Packers and Stockyards Act in 1921 until early in 1934

[1] The Act defines "market agency" as any person engaged in the business of (1) buying or selling livestock at a stockyard on a commission basis, or (2) furnishing stockyard services. 7 U. S. C. 201 (b) and (c).

it was the "regular and continuous practice" of the Department of Agriculture to require packers and packer-buyers to register as dealers under the Act (R. 87, 51). In 1934, following the decision in *United States* v. *Roberts & Oake,* 65 F. 2d 630 (C. A. 7, 1933), which held that a packer was not a dealer under the Act and therefore was not required to furnish a bond, the Department ceased requiring packers and packer-buyers to register (R. 87, 88). The Department continued to maintain a register of packers and packer-buyers until 1948 when, "because of administrative considerations," such registration was discontinued (R. 88–89, 48, 50, 51, 53).

In recent trade practice investigations, the Department discovered that packer-buyers had been involved in various improper practices (R. 50, 52, 53).[2] But since the packer-buyers were no longer registered, the Secretary had no power to take disciplinary action against them (R. 52). The Department therefore concluded that it had been "an unwise move to discontinue registration of those buyers" (R. 52). In order to "put the industry on notice" of the Secretary's intention to resume registration of packer-buyers

[2] In an investigation of the Chicago stockyards, the Department discovered that six packer-buyers, together with speculators and weighmasters, had participated in false weighing (R. 50, 52, 53). See *Cella* v. *United States*, 208 F. 2d 783 (C. A. 7), certiorari denied, 347 U. S. 1016; *Meyer* v. *United States*, 211 F. 2d 406 (C. A. 7), certiorari denied, 347 U. S. 1016.

(R. 53), so that "when they show up in future investigations as being involved along with some other members of the trade that the Secretary can suspend them" (R. 52), the Secretary, after rule-making proceedings unchallenged as to regularity (R. 73, 81), promulgated the regulation under attack. It provides that:

> Any person regularly employed on salary, or other comparable method of compensation, by a packer to buy livestock at posted stockyards for such packer shall be subject to the registration requirements of the act and the regulations in this part. Such persons shall be registered as dealers to purchase livestock for slaughter only. [R. 11; 9 C. F. R. 1954 Supp. § 201.10 (e)]

ARGUMENT

The petition presents only the narrow question whether salaried persons employed by packers to buy livestock for them at stockyards may be required to register as "dealers" under the Packers and Stockyards Act, 1921. We submit that the affirmative answer given to this question by the court of appeals is clearly correct, and that there is no occasion for further review by this Court.

1. The statutory definition of "dealer" in Section 301 (d) is not ambiguous, as petitioners contend (Pet. 8), but clearly embraces a person regularly employed on salary by a packer to buy livestock for it at a posted stockyard. "Dealer"

is defined to include "any person, not a market agency, engaged in the business of buying * * * in commerce livestock at a stockyard * * * as the employee or agent of the * * * purchaser." Hence, with one exception not here pertinent (a market agency, see note 1, *supra*), any person engaged in the business of buying livestock at a posted stockyard as the employee or agent of the purchaser is a dealer under the Act.

Packer-buyers employed by packers to purchase livestock for them as their agents plainly are "engaged in the business" of buying livestock at posted stockyards. The term "business" embraces "everything about which a person can be employed." *Flint* v. *Stone Tracy Co.*, 220 U. S. 107, 171. See also, *Von Baumbach* v. *Sargent Land Co.*, 242 U. S. 503, 515; *Kelley* v. *United States*, 202 F. 2d 838, 841 (C. A. 10); *Supreme Malt Products Co.* v. *United States*, 153 F. 2d 5, 6–7 (C. A. 1). Petitioners' argument (Pet. 9–10) that the term means "principal business" does not aid their position. For although the packers' principal business may be packing meat rather than purchasing livestock, the principal—indeed, the only—business of the packer-buyers is "buying * * * livestock at a stockyard * * * as the employee or agent" of the packer.[3]

[3] Contrary to petitioners' contention (Pet. 10), the fact that the livestock which they buy is slaughtered by their employers does not negative the fact that they are engaged in the business of buying livestock.

Petitioners' contention (Pet. 14) that Congress in using the term "dealer" did not "have in mind the salaried employee" of the purchaser of livestock is refuted by the language of the Act itself. For Section 301 (d) defines "dealer" to include persons engaged in the business of purchasing livestock at a stockyard "as the *employee* or agent of the * * * purchaser" (emphasis added).

2. The legislative history of Section 301 (d) supports the view that Congress intended to treat packer-buyers as dealers. As originally passed by the House, the bill (H. R. 6230, 67th Cong., 1st sess.) contained the present definition of dealer. The bill was amended in the Senate to add to the definition the words "and includes any packer in his capacity as a buyer or seller of livestock in commerce and any employee or agent of any packer in such capacity." (61 Cong. Rec. 2665). Senator Kenyon, the sponsor of the amendment, explained that its purpose "is simply to make it specific that the buyers of the packers, who may operate under assumed names or as dummies in the stockyards, shall be included. There cannot be any question about that" (*ibid.*).

When the bill went to conference, the amendment was rejected but only because, in the words of the conference report (H. Rep. No. 324, 67th Cong., 1st sess., p. 3), it "adds at the end of this definition [in the House Bill] words which merely repeat what was in the House Bill." Thus, the Congress concluded that there was no need to

Finally, the regulation here challenged in terms applies only to packer-buyers, not to farmers.

Nor is there merit in petitioners' contention (Pet. 13–14) that treating packer-buyers as dealers would subject them to burdensome reporting requirements. The regulations require only registration, and they specifically exempt packer-buyers from the record-keeping requirements imposed on other dealers (Reg. 201.46 (a), R. 24–25).

CONCLUSION

The decision below is correct, there is no conflict of decisions, and the petition presents no question warranting further review by this Court. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

SIMON E. SOBELOFF,
Solicitor General.
STANLEY N. BARNES,
Assistant Attorney General.
DANIEL M. FRIEDMAN,
Attorney.

ROBERT L. FARRINGTON,
General Counsel,
NEIL BROOKS,
Assistant General Counsel,
DONALD A. CAMPBELL,
Attorney,
Department of Agriculture.

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